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State v. Austin Respondent's Brief 2 Dckt. 41521

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. WESLEY WAYNE AUSTIN, Defendant-Appellant.	)	No. 41521 Bingham Co. Case No. CR-2000-3162

SUPPLEMENTAL BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

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District Judge

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Nature Of The Case, Statement Of Facts And Course Of Proceedings

The state submits this Supplemental Respondent's Brief to address Austin's supplemental arguments that the district court erred by: (1) denying his Motion to Dismiss Warrant (Ltd. R.,[1] p.18), and (2) denying his Motion to Dismiss for Lack of Jurisdiction (Ltd. R., pp.45-47). The nature of the case, statement of facts and course of proceedings are set forth in the Respondent's Brief and are incorporated herein by reference. With some overlap to provide context, the following additional facts and proceedings are relevant to Austin's supplemental argument.

On March 19, 2001, pursuant to a plea agreement, Austin pled guilty to ten counts of felony issuance of an Insufficient Funds Check. (R., Vol. 1, pp.239-243, 246-248; see generally 3/19/01 Tr.) On April 16, 2001, the district court verbally sentenced Austin to "a minimum of two years and a maximum of three years" on each count, consecutive, and placed Austin on probation for ten years. (4/16/01 Tr., p.29, L.6 - p.30, L.2.) However, the subsequent written Judgment of Conviction provided that each of the underlying consecutive sentences were two years determinate followed by indeterminate terms of three years. (R., Vol. 1, pp.275-277.) On October 19, 2001, the district court corrected Austin's written judgment by filing an Amended Judgment of Conviction to reflect that Austin was sentenced to ten consecutive sentences of three years with two years fixed. (R., Vol. 1, pp.327-339.) Austin filed a notice of appeal (R., Vol. 1, pp.289-291), which, in an unpublished decision by the Idaho Court of Appeals, was dismissed for being untimely filed (R., Vol. 1, pp.349-350).

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[1] "Ltd. R.," refers to the "Limited Clerk's Record on Appeal."

On April 12, 2013, Austin filed a pro se "Motion to Correct an Illegal Sentence Pursuant [to] Rule 35(a)," claiming that the district court was bound by Austin's Rule 11 plea agreement to order that the sentences run concurrent. (R., Vol. 1, pp.423-426.) After the parties filed competing memoranda (R., Vol. 1, pp.455-470, 483-484), and a hearing (see generally 6/20/13 Tr.), the district court issued a written opinion denying Austin's Rule 35 motion to correct an illegal sentence (R., Vol. 1, pp.486-494). On October 15, 2013, Austin filed a timely appeal. (R., Vol. 1, pp.495-496, 510-511.)

On May 19, 2014, Austin filed a Motion to Dismiss Warrant, contending that, because he had "demanded a speedy disposition on this matter" and "has not had such a trial, the warrant requires dismissal with prejudice, pursuant to the Interstate Agreement on Detainers, and Idaho Statute 19-5001." (Ltd. R., p.18.) A bench warrant for a probation violation and a detainer had been filed against Austin in 2010, who was in federal custody in Mississippi. (Ltd. R., pp.30-34.)

On June 19, 2014, Austin filed a Motion to Dismiss for Lack of Jurisdiction (Ltd. R., pp.45-47), arguing: (1) the sentence set forth in the original Judgment of Conviction "was illegal and sentence [sic] was not imposed until Court [sic] corrected the judgement" [sic] because it "imposed a sentence of 5 years in prison" for each of the ten counts, which exceeded the three-year statutory maximum; (2) because the October 19, 2001 amended judgment constituted a sentencing or resentencing, his presence was required under I.C. § 10-2503 and I.C.R. 43(a); and (3) because Austin was not present at his October 19, 2001 sentencing, the district court did not have jurisdiction to either sentence him on that date or to subsequently "cause a warrant and detainer to be issued" for a probation violation (Ltd. R., pp.45-46).

The court held a hearing on Austin's motions on July 2, 2014, in which Austin participated pro se and via telephone. (See generally 7/2/14 Tr.) At the end of the hearing, the district court denied Austin's two motions. (Ltd. R., pp.48-49, 53-54, 57-58, 61-62; 7/2/14 Tr., p.12, L.18 - p.13, L.22; p.20, L.20 - p. 22, L.8.) Austin filed a timely notice of appeal. (Ltd. R., p.50.)

SUPPLEMENTAL ARGUMENT

Austin Has Failed To Show Any Error In The District Court's Denial Of His Motions To Dismiss For Lack Of Jurisdiction And To Quash The Warrant

Austin first argues that his Amended Judgment of Conviction, filed by the district court on October 19, 2001 (R., Vol. 1, pp.327-339) constituted a "resentencing" hearing which required his presence. (Appellant's Supp. Brief, p.3 ("It was a resentencing because the District Court changed material facts that could have been appealable.").)

However, as explained previously (see Appellant's Brief, pp.5-9; Appendix A), the district court properly corrected the initial written Judgment of Conviction to reflect the actual sentences pronounced at sentencing. Under I.C.R. 36 the court had authority to correct the clerical error "at any time and after such notice, if any, as the court orders." Because the Amended Judgment of Conviction served only to correct the length of Austin's unified sentences, and the correction from five to three years inured to Austin's benefit, the court did not abuse its discretion by making the correction without notice and without Austin's presence. Stated differently, Austin was neither "sentenced" nor "resentenced" by virtue of the Amended Judgment of Conviction; therefore, his presence was not required.

In sum, because the district court's oral pronouncement of Austin's sentences is controlling, and because the initial judgment of conviction did not accurately reflect the court's pronouncement of lesser unified sentences, the court was entitled to correct the clerical error without Austin's presence. See I.C.R. 36. This Court should uphold the district court's order denying Austin's motion to dismiss for lack of jurisdiction.

Alternatively, even if Rule 36 did not give the district court authority to correct Austin's sentence, Rule 35(a) did. On its face, the original Judgment of Conviction imposed an illegal sentence because the unified five-year terms exceeded the statutory maximum of three-year terms for Insufficient Funds Check charges.[2] See I.C. § 18-3106(a) (prison term is not to exceed three years). The state relies on the reasoning of the district court, which correctly explained:

> While I've listened to this argument, the one thing that you seem to be missing, Mr. Austin, is the provision of Idaho Criminal Rule 43(c)(4).
>
> . . . .
>
> However, Rule 43(c)(4) specifically provides that, when the Court takes action pursuant to Rule 35 to reduce the sentence to correct an illegality, the presence of the defendant is not required.
>
> That's what occurred here. Once it came to my attention that there had been a clerical mistake made in the judgment -- and it was contrary to my notes, but a clerical mistake was made in the judgment with the wrong number of years -- I fixed it. I reduced the sentence under subsection (1) of Rule 35, which is my entitlement at any time. I maintained jurisdiction throughout the pendency of the case to do such. Rule 13 of the appellate rules is clear that I still have continuing jurisdiction to do that even though there's a pending appeal.
>
> And under Rule 43(c)(4), I do not need to have the defendant present or even conduct a formal proceeding in order to do so.

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[2] Additionally, the five-year unified sentences set forth in the initial Judgment of Conviction are illegal because, as discussed, they do not accurately reflect the district court's oral pronouncement of the sentences.

So there's no merit to this argument. Motion is denied.

(7/2/14 Tr., p.12, L.18 - p.13, L.22.)

The district court properly denied Austin's motion. Inasmuch as the initial written Judgment of Conviction incorrectly stated that unified terms of Austin's sentences were five years (and more than the three-year maximum) instead of accurately reflecting three years as pronounced in open court, the written judgment ordered "a sentence that is illegal from the face of the record[,]" subject to being corrected "at any time." I.C.R. 35(a); see State v. Allen, 144 Idaho 875, 877-878, 172 P.3d 1150, 1152-1153 (Ct. App. 2007) (words pronounced in open court control over words in written order). Because the district court's correction of Austin's unified terms constituted "a reduction of sentence under Rule 35[,]" Austin's presence was not required. I.C.R. 43(c)(4).

Secondly, the district court correctly dismissed Austin's Motion to Dismiss Warrant, which Austin based upon the Interstate Agreement on Detainers and I.C. § 19-5001 ("Interstate Agreement on Detainers," or "IAD"). (See Ltd. R., p.18.) The court ruled that the IAD does not apply to probation violations, explaining:

> You are in the custody of the Federal Government. Even though Idaho and the Federal Government might be signatories to the Interstate Compact on Detainers or the IAD, that act or that compact only applies to the ability of one requesting state to demand that a holding state tender a defendant to the requesting state for purposes of returning to the requesting state to face trial of a pending criminal matter. That must be done within six months of the request. And upon conviction, if there is a conviction, the defendant is returned to the offering state to finish serving out the sentence there before returning to the requesting state to serve whatever sentence is going to be imposed.
>
> It's designed to be something that facilitates speedy trial of untried matters. It does not apply to probation violations.
>
> And what you're suggesting is that I ought to stretch that law out of some equity consideration and bring you back under the detainer law,

> even though you're facing an untried matter. There's simply no mechanism to do that, because the two jurisdictions which are signatory to the compact don't provide for that. So that manner that that must be dealt with is that you serve your time where you are; then you come back here and deal with whatever you've got to deal with here. That's the way the law is structured. I have no power to do otherwise.
>
> So that motion will be denied.

(7/2/14 Tr., p.21, L.5 - p.22, L.8.)

The district court accurately determined that the IAD does not apply to probation violations. In Swain v. State, 122 Idaho 918, 920, 841 P.2d 448, 450 (Ct. App. 1993), the Idaho Court of Appeals stated:

> It is undisputed that one of the purposes behind the act relating to interstate detainers is to encourage speedier dispositions of untried prosecutions for the adjudication of guilt following the commission of a crime and reduce the continuation of unsubstantiated charges which may have a detrimental effect on a prisoner's treatment. To the contrary, a probation violation proceeding may well be based on the prisoner's commission of the crime that resulted in his conviction and incarceration in the "sending" state and, because the conviction conclusively establishes the probation violation, the probation violation charge will not be unsubstantiated. *Carchman v. Nash*, 473 U.S. 716, 730–31, 105 S.Ct. 3401, 3409, 87 L.Ed.2d 516 (1985). Accordingly, the Interstate Agreement on Detainers Act does not apply to warrants or detainers asserting claims of alleged violation of probation. *Id.* at 734, 105 S.Ct. at 3410.

See also State v. Miller, 134 Idaho 458, 463, 4 P.3d 570, 575 (Ct. App. 2000) ("[W]e hold that in Idaho the I.A.D., as set forth in I.C. §§ 19–5001 to –5008, is inapplicable to sentencing detainers. Therefore, the district court did not err in denying Miller's motion to dismiss based on an alleged violation of the I.A.D.").

Because the IAD is not applicable to probation violations, the district court's denial of Austin's motion to dismiss the warrant of detention must be affirmed.

CONCLUSION

For the reasons set forth herein, as well as in the initial Brief of Respondent, the state respectfully requests that this Court affirm the district court's orders denying Austin's Motion to Dismiss Warrant of Detention and his Motion to Dismiss for Lack of Jurisdiction.

DATED this 12th day of December, 2014.

JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of December, 2014, I caused two true and correct copies of the foregoing SUPPLEMENTAL BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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JCM/pm